

## ZONING IMPROVEMENTS AGREEMENT

For \_\_\_\_\_

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between \_\_\_\_\_ ("Owner") and Gallatin County, Montana ("County").

WHEREAS, it is the intent and purpose of the Owner to meet the conditions of approval of \_\_\_\_\_ as approved by the Gallatin County Planning Department on the date of \_\_\_\_\_; and

WHEREAS, it is the intent and purpose of the Owner to occupy buildings beginning \_\_\_\_\_ and thereafter; and

WHEREAS, pursuant to Section \_\_\_\_\_ of the \_\_\_\_\_ Zoning Regulation it is the intent and purpose of the Owner and the County to enter into this Agreement which will guarantee the full and satisfactory completion of improvements on the property described in this Agreement; and it is the intent of this Agreement, and the parties hereto, to satisfy the Improvements guarantee requirements for the Zoning Regulation.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

**Section 1. Property Description.** This Agreement pertains to and includes that property, which is designated and identified as \_\_\_\_\_, located in \_\_\_\_\_, \_\_\_\_\_ of Section \_\_\_\_\_, PMM, Gallatin County, Montana.

**Section 2. Improvements and Time of Completion.** Owner shall, at its sole cost and expense, install the improvements as indicated by site plan for \_\_\_\_\_. One Hundred Fifty Percent (150%) of the estimated cost of the improvements is \$\_\_\_\_\_ as shown on the attached Exhibit "A" which is made a part of this Agreement.

**Section 3. Schedule for Completion of the Improvements.** The Owner must complete the described improvements within \_\_\_\_ months/years of occupancy of the buildings, or the date of \_\_\_\_\_, whichever is first. The Owner shall be allowed extensions of time beyond the completion date only for unavoidable delay caused by strikes, lockouts, acts of God, or other factors beyond the control and ability to remedy of the Owner or any agent or contractor hired by, or on behalf of, the Owner; provided, however, that no extension of time shall be allowed for any delay caused by weather conditions. The Owner shall, within two days after such delay commences, give notice to the County for its review and approval of the delay, the cause for the delay, the period of anticipated period of the delay and steps grants to the County, in addition to all other rights afforded to the County in this Agreement and by law, the right, at the County's option, to complete the construction of the improvements or to correct such defect or deficiency, using either its own forces or contractors hired for that purpose. The County shall have the right to draw from the financial security guarantee pursuant to Section 7 of this Agreement, as well as the right to demand payment directly from the Owner, based either on

costs actually incurred or on the County's reasonable estimates of costs to be incurred, an amount of money sufficient to defray the entire cost of the work, including legal fees and administrative expenses. The County may enforce any other remedy provided by law. These remedies are cumulative in nature.

**Section 4. Inspection.** Representatives of the County shall have the right to enter upon the property at any reasonable time to inspect and to determine if the Owner is in compliance with this Agreement. The Owner shall permit the County and its representatives to enter upon and inspect the property at any reasonable time.

**Section 5. One-Year Warranty of the Improvements.** The Owner hereby warrants the prompt and satisfactory correction of all material defects and deficiencies in the improvements that occur or become evident within one year after acceptance of the improvements by the County ("Warranty Period"). If any such defect or deficiency occurs or becomes evident during such period, then the Owner shall, within 10 days after receipt of written demand from the County to do so, correct it or cause it to be corrected. The warranty provided by this Section 5 shall be extended for one full year from the date of repair or replacement of any improvement repaired or replaced pursuant to such demand.

**Section 6. Financial Security Guaranty.** As security to the County for the performance by the Owner of the Owner's obligations to complete the improvements pursuant to and in accordance with this Agreement, the Owner shall deposit with the County security in the amount of \_\_\_\_\_ which is 150% of the cost of the improvements as stated on Exhibit "B" in the following form: Letter of Credit issued by \_\_\_\_\_, not to expire prior to \_\_\_\_\_. Owner at its discretion may provide a substitute letter of credit issued by a bank or other financial institution authorized to issue letters of credit in Montana. The County reserves the right to approve any substitute Letter of Credit for form and content.

**Section 7. Reduction of Security.** If during the term of this Agreement the County reduces the financial assurance requirements commensurate with the completion of improvements, such reduction shall be subject to 10% of the cost of the completed improvements to be held as security for the Warranty Period provided in this Agreement. At the time of acceptance of the completed improvements, the County will issue a written release of the remaining draw amount of the Letter of Credit. The amount to be released for the completed improvements shall be the total amount of the Letter of Credit less 10% of the total costs of the improvements to be withheld as warranty security. The warranty security shall remain in effect for the Warranty Period plus an additional 90 days.

#### **Section 8. Default.**

8.1 *Default.* If the Owner defaults in or fails to fully perform any of its obligations in accordance with this Agreement, or fails or refuses to correct any defect or deficiency in the improvements required by this Agreement and such default or failure shall continue for a period of thirty (30) days after written notice specifying the default is deposited in the United States mail addressed to the Owner without being completely remedied, satisfied and discharged, the County shall have, and the Owner hereby grants to the County, in addition to all

other rights afforded to the County in this Agreement and by law, the right, at the County's option, to complete the construction of the improvements or to correct such defect or deficiency, using either its own forces or contractors hired for that purpose. The County shall have the right to draw from the financial security guarantee pursuant to this Agreement, as well as the right to demand payment directly from the Owner, based either on costs actually incurred or on the County's reasonable estimates of costs to be incurred, an amount of money sufficient to defray the entire cost of the work, including legal fees and administrative expenses. The County may enforce any other remedy provided by law. These remedies are cumulative in nature.

8.2. *Liquidated Damages.* Owner and County recognize that time is of the essence of this Improvements Agreement. Owner recognizes that failure to timely complete improvements agreements results in the County Attorney and staff, Planning staff, Road Department Staff, and often the County Commission and staff, taking valuable time to monitor and manage the completion of the agreement. The parties also recognize that the same County officers and employees must take valuable time should a default of an improvements agreement be taken. Accordingly, instead of providing any such proof, Owner and County agree that as liquidated damages for delay (but not as a penalty) Owner shall pay County \$150.00 (one hundred fifty dollars) per day for each day that Owner fails to fully complete all the required improvements. The sum of \$150.00 per day is exclusive of and in addition to any other remedy to which the County may be entitled pursuant to the default provisions of this agreement.

## **Section 9. Liability and Indemnity of County.**

**A.** *No Liability for County Approval.* The Owner acknowledges and agrees (1) that the County is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the County's issuance of any approvals or acceptances of the improvements or use of any portion of the improvements, and (2) that the County's issuance of any approvals or acceptances does not, and shall not, in any way be deemed to ensure the Owner, or any of its heirs, successors, assigns, tenants, or licenses, or any third party, against damage or injury of any kind at any time.

**B.** *Indemnification.* The Owner agrees to, and does hereby, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims, costs and liability of every kind and nature ("Claims") that may be asserted at any time against any such parties for injury or damage received or sustained by any person or entity in connection with (1) the County's review and approval of any plans for the improvements, (2) the issuance of any approval or acceptance for the improvements, (3) the development, construction, maintenance or use of any portion of the improvements, and (4) the performance by the Owner of its obligations under this Agreement and all related agreements. The Owner further agrees to aid and defend the County in the event that the County is named as a defendant in an action concerning the improvements provided by this Agreement except where such suit is brought by the Owner. The Owner is not an agent or employee of the County.

**Section 10. No Waiver of County Rights.** No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision nor will it be deemed to constitute a continuing waiver unless expressly provided for; nor will the waiver of any default under this

Agreement be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any obligation under this Agreement will not constitute the approval of any wrongful act by the Owner or the acceptance of any improvement.

**Section 11. Governing Law.** This Agreement shall be construed according to the laws of the State of Montana.

**Section 12. Changes of Law.** Any reference to laws, ordinances, rules, or regulations shall include such laws, ordinances, rules, or regulations as they have been, or they may hereafter, be amended.

**Section 13. Time of Essence.** Time is of the essence in the performance of all terms and provisions of this Agreement.

**Section 14. Assignment.** It is expressly agreed that the Owner shall not assign this Agreement in whole or in part, without prior written consent of the County.

**Section 15. Successors.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, successors, and assigns.

**Section 16. Notices.** All notices in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third day after being deposited in the United States mail, for delivery by being properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below.

Notices to the County shall be addressed to, and delivered at, the following address:

Gallatin County Commissioners  
Gallatin County Courthouse, Room 301  
311 West Main  
Bozeman, MT 59715

Notices to the Owner shall be addressed to, and delivered at, the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_

---

---

By notice complying with the requirements of this Section, each party shall have the right to change the address or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

**Section 17. Enforcement.** The parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation: specific performance, enforce or compel the performance of this Agreement; provided, however, that the Owner agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the County or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

**Section 18. Amendments.** All amendments to this Agreement shall be in writing and shall be approved by the Owner and the County.

**Section 19. Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

**Section 20. Authority to Execute.** The County and the Owner hereby acknowledge and agree that all required notices, meetings and hearings have been properly given and held by the County with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. The County hereby warrants and represents to the Owner that the persons executing this Agreement on its behalf have been properly authorized to do so by the County Commissioners. The Owner hereby warrants and represents to the County (1) that it is the record owner of fee simple title to the lots, (2) that it has the right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the site as set forth herein, (3) that all legal action needed to authorize the execution, delivery and performance of this Agreement have been taken, and (4) that neither the execution of this Agreement nor the performance of the obligations assumed by the Owner hereunder will (i) result in a breach or default under any agreement to which the Owner is a party or to which it or the Subdivision is bound or (ii) violate any statute, law, restriction, court order, or agreement to which the Owner is subject.

**Section 21. Filing.** The Owner shall have this Agreement placed in the office of the Gallatin County Clerk & Recorder at the time it is approved by the Owner and the County.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first above written.

---

**OWNER**

STATE OF \_\_\_\_\_ )  
:ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2006, before me \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument in person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Printed Name \_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_  
Residing at \_\_\_\_\_  
Commission Expires \_\_\_\_\_

**COUNTY:**

BOARD OF COUNTY COMMISSIONERS  
GALLATIN COUNTY, MONTANA

\_\_\_\_\_  
Joe Skinner, Chairperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
William A. Murdock, Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
R. Stephen White, Member

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Charlotte Mills, Clerk and Recorder  
Gallatin County, Montana

\_\_\_\_\_  
Date

**Approved as to Legal Content:**

\_\_\_\_\_  
Deputy Gallatin County Attorney

\_\_\_\_\_  
Date

Copy saved @ f:\plng\forms\Forms 2006\Zoning Improvements Agreement GSS edits Final Version 6 6 06.doc